IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5431 OF 2006
WITH
WRIT PETITION NO.5442 OF 2006

Solapur Nagari Audyogik Sahakari Bank Niyamit, Solapur ..Petitioners
V/s.
Solapur District Industrial Co-op. Bank Ltd. Solapur (In liquidation) & Anr...Respondents

Mr.V.A. Thorat with Mr.Ajay A. Gadkari for the Petitioners.

Mr.S.S. Kanetkar for Respondent No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH JANUARY, 2007.

ORAL JUDGMENT :

1. Rule. By consent returnable and heard forthwith.

2. As the parties, facts and questions of law which fall for consideration are identical in both the Petitions, they are disposed of by this common order and judgment.

3(a). The Petitioners are secured creditors of Respondent No.1 for an aggregate sum of over Rs.10.00

crores due in respect of amounts invested by the Petitioners with Respondent No.1 for which fixed deposit receipts were executed.

(b). As Respondent No.1 failed to repay the said amounts, the Petitioners filed two disputes being case Nos.976 of 2001 and 109 of 2002 before the Co-operative Court at Solapur under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereafter referred to as "the said Act") for recovery of a sum of Rs.6,12,21,371/- and Rs.4,31,47,600/- respectively.

(c). In both the cases the Petitioners filed applications under Section 95 of the said Act for interim reliefs. By an order dated 7.11.2001 in the interim application in case No.976 of 2001 Respondent No.1 were restrained from withdrawing the amounts invested by them with Respondent No.2, Maharashtra State Co-opeartive Bank. In the interim application in Case No.109 of 2002 an order dated 12.2.2002 was passed inter-alia attaching before award a sum of Rs,7,20,00,000/- deposited by Respondent No.1 with Respondent No.2.

4. Both the disputes were settled as recorded in

compromise pursis dated 28.3.2002. The disputes were disposed of in terms of an order also dated 28.3.2002.

5(a). As Respondent No.1 failed to make payment in terms of the compromise, the Petitioners obtained a certificate under Section 98 of the said Act for execution of the award dated 28.3.2002.

(b). The Petitioners thereafter filed execution proceedings in the Court of Civil Judge (S.D.), Solapur bearing Special Darkhast Nos.47 of 2003 and 48 of 2003 in the two disputes. In the execution proceedings, the Petitioners sought inter-alia an order of attachment of the properties of Respondent No.1 including the said sum of Rs.7,20,00,000/- deposited by Respondent No.1 with Respondent No.2.

(c). By an order dated 10.4.2003, the learned Judge passed an order of attachment under order 21 Rule 54 of the C.P.C. and issued a garnishee warrant under order 21 Rule 66 of the C.P.C. on Respondent No.2.

6. During the pendency of the execution proceedings, the Commissioner of Co-operation and the Registrar of Co-operative Societies, Maharashtra, by

an order dated 13.10.2003 declared Respondent No.1 be wound up under Section 110-A(2) of the said Act and appointed the District Deputy Registrar, Co-operative Societies, Solapur as liquidator of Respondent No.1. The liquidator informed the Petitioners of the same by his letter dated 16.2.2004.

7. The Petitioners sought permission under Section 107 of the Act from the Registrar of Co-operative Societies to implead the Liquidator as a party in the above proceedings. By a letter/order dated 5.9.2005, the Divisional Joint Registrar, Co-operative Societies, granted the Petitioners permission to implead the Liquidator in the said proceedings. As is usual on the Appellate side there was no dispute about the translation of the documents in Marathi. The translation of the relevant part of the permission dated 5.9.2005 as agreed by the Counsel is as under :-

> " Order is passed under Section 107 of the Maharashtra Co-operative Societies Act permitting the Liquidator to be made a party to the execution proceedings and to continue the proceedings."

8. The Liquidator filed his reply dated 4.10.2005 to the execution proceedings. On

14.11.2005, the Liquidator filed applications in both proceedings to set aside the orders of attachment and to dispose of the execution proceedings. The Liquidator stated that he had submitted a proposal for fixing the priority list for distribution of the assets and liabilities of Respondent No.1. ; that the Divisional Sub-Registrar, Co-operative Societies had fixed the priority list and informed the Liquidator of the same by a letter dated 12.9.2005 and that the Liquidator had to complete the said work as per the priority list. The Liquidator however, stated that in view of the attachment order, he was unable to proceed with the work of distribution of the assets to the creditors. He therefore, prayed that the attachment be raised and the execution proceedings be disposed of.

9. The learned Civil Judge (S.D.), Solapur by the impugned order dated 14.7.2006 allowed both the applications filed by the Liquidator, raised the attachment and disposed of the execution proceedings.

10. Mr.Kanetkar, the learned counsel appearing on behalf of Respondent No.1, submitted that the execution proceedings were not maintainable despite permission having been granted by the Registrar to

make the Liquidator a party to the execution proceedings and to continue the same against him. He submitted that the permission under Section 107 of the said Act would not entitle the Petitioners to continue the execution proceedings in view of Section 163 of the said Act and in particular clause (c) of sub-section (1) thereof. Sections 107 and 163 read as under :-

> **"107. Bar of suit in winding up and dissolution matters . -** Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act ; and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the Liquidator, except by leave of the Registrar, and subject to such terms as he may impose :
>
> . Provided that, where the winding up order is cancelled the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as Liquidator." (emphasis supplied)
>
> **"163. Bar of jurisdiction of Courts. -** (1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of -
>
> (a) the registration of a society or its by-laws, or the amendments of its by-laws or the

> dissolution of the committee of a society, or the management of the society on dissolution thereof; or
>
> (b) any dispute required to be referred to the Co-operative Court, for decision ;
>
> (c) any matter concerned with the winding up and dissolution of a society.
>
> (2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar,and subject to such terms as he may impose.
>
> (3) All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final ; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever."

11. The submission is not well founded. It is pertinent to note that the bar in Section 163 against the Civil or Revenue Courts having jurisdiction in any matter concerned with the winding up and dissolution of a society is not unqualified. Section 163 is prefaced with the words " Save as expressly provided in this Act ....."

12. Section 107 expressly provides that when a winding up order has been made a suit or other legal proceedings may be proceeded with against the society by leave of the Registrar.

. I find no inconsistency between the provisions of Sections 107 and 163 of the said Act. The language of both the sections is clear. The bar under Section 163 will not operate if permission under Section 107 is obtained from the Registrar.

13. Mr.Kanetkar however submitted that the permission under Section 107 would only operate in limited cases such as in respect of disputes relating to membership of the society. It would not apply, according to him, to disputes such as the one under consideration.

14. The ambit of Section 107 is wide. The permission granted under Section 107 would cover execution applications. There is nothing either in Sections 107 or 163 or for that matter in any of the provisions of the Act which warrants an inference that the permission contemplated under Section 107 of the said Act is restricted to dispute such as whether a

person is a member of the society or not.

15. Mr.Thorat, the learned Senior Counsel appearing on behalf of the Petitioners relied upon the judgments in the case of *Digambar Narayan Modak v. Malegaon Co-operative Credit Society, 1949 BLR, 746*, and *The Fartilizer Corporation of India v. Kolaba Zilla Sahakari Kharedi Vikri Sangh Ltd. and ors., 1980 C.T.J. 371*. The question under consideration did not directly arise in the first judgment. The following observations of the Division Bench in *The Fartilizer Corporation of India's* case however supports Mr.Thorat's contention.

> "But the question is as to whether respondent No.1 could proceed with the execution application to execute the award in view of the provisions of section 107 of the Act.The section unequivocally provides that in such a case on suit or other legal proceedings shall lie or be proceeded with against the society or the Liquidator except by leave of the Registrar, and subject to such terms as he may impose. Now, it is not disputed that in the instant case the execution proceedings were, in fact commended after the order of Liquidator was confirmed. It is also not disputed before us that provisions of section 107 requiring leave of the Registrar to proceed with the execution application have not been complied with, therefore, it would appear that the order of the learned Civil Judge proceeding with the execution application is

without jurisdiction."

16. Admittedly, the Registrar's order dated 5.9.2004 granting the Petitioners permission to continue the execution proceedings against the Liquidator has neither been challenged nor set-aside. In these circumstances, there is no question of the execution proceedings being disposed of.

17. Mr.Kanetkar's reliance upon the judgment of the Supreme Court in *Industrial Credit And Investment Corporation of India Ltd. v. Srinivas Agencies and others, (1996) 4 Supreme Court Cases 165* is of no assistance either to the Petitioners or in deciding the question that falls for consideration. The Supreme Court was not concerned with the present question at all. The Supreme Court was concerned with the question of exercise of jurisdiction by the Courts while dealing with an application for leave under Section 446 of the Companies Act, 1956d. Indeed in paragraphs 4 (ii) and 5 the Supreme Court held :-

> "4. A combined reading of the aforesaid provisions leads to the following results :
>
> (ii) When a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal

> proceeding, even if pending at the date of the winding-up order, can proceed against the company, except by leave of the company court vide sub-section (1) of Section 446.
>
> 5. None of the parties has assailed the aforesaid propositions of law as well. The real bone of contention is as to when (i) leave of the winding-up court should be granted to a secured creditor to proceed with the suit after an order of winding up has been made ; and (ii) when should a winding-up court transfer to itself any suit or proceeding by or against the company during the pendency of the winding-up proceeding."

. The Supreme Court did not restrict the ambit of the leave including qua the nature of proceedings.

18. The learned Judge held that the permission granted by the Registrar under Section 107 "has nowhere restricted the provisions laid down in the Act which are strictly applicable during the course of liquidation." I presume that what the learned Judge meant was that the permission does not restrict the applicability of the provisions of the said Act.

19. Indeed the Registrar has no authority to restrict the provisions of the Act. The question however does not arise. The permission dated 5.9.2004 does not in any manner purport to restrict the

provisions of the Act. As observed earlier, the permission is granted under Section 107 of the said Act. The bar under Section 163 of the said Act therefore, does not apply in the present case. At the cost of repetition, it is to be noted that the permission under Section 107 of the said Act itself has not been challenged or set-aside.

20. It is only the Registrar who is authorized to grant leave under Section 107 of the Act. Neither the Civil nor the Revenue Courts are concerned with the question of leave under Section 107. Nor are they authorized to grant the leave contemplated in Section 107. It is axiomatic therefore that leave granted by the Registrar cannot be revoked or ignored by the Civil or Revenue Courts.

21. Needless to add that it would be open to the Liquidator to take all defences in execution proceedings.

22. In the circumstances, the impugned order is set-aside. The Rule is made absolute in terms of prayers (a) to (d) in both the Petitions. Respondent No.1 shall pay the Petitioners Rs.1000/- towards costs for each of the Writ Petitioner within eight weeks

from today.

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DATE OF DECISION : 24TH JANUARY, 2007

For Approval and Signature :

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?

2. To be referred to be Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices ?